ADZHAR MOHD NORDIN v. PENTADBIR TANAH DAERAH HULU LANGAT & ORS; LANDSERVE SDN BHD (THIRD PARTY) AND ANOTHER CASE

HIGH COURT MALAYA, SHAH ALAM
ALICE LOKE YEE CHING J
[WRIT SUMMONS NOS: BA-21NCVC-36-06-2019
& BA-22NCVC-429-10-2019]
30 AUGUST 2024

Abstract – *(i) A specific written and signed reference to the account, admission of outstanding debt and proposal to settle constitute an acknowledgment of debt and the accrual of the right of action shall commence from the date of such acknowledgment; (ii) When a party is aggrieved by an order for sale, he must appeal under s. 418 of the National Land Code. A subsequent suit seeking to declare the order for sale complained about null and void is misconceived; (iii) The successful bidder in a public auction is entitled to compensation for the acquired land. Allegations of impropriety require cogent evidence to be substantiated as mere suspicion is insufficient; (iv) A valuer appointed by a chargee bank does not owe a duty of care to the chargor. The chargor may appoint his own valuer if he disagrees with the valuation; (v) The Land Administrator has the discretion to reject an application to postpone an auction, even if the same is submitted within the stipulated time.*

LIMITATION: *Action – Right of action – Accrual – Acknowledgment of debt – Land charged as security to overdraft facilities – Borrower defaulted in repayment of facilities – Land foreclosed and ordered to be sold at public auction – Whether proceedings for order for sale time-barred – Letter by debtor to bank contained specific reference to account of borrower, admission that account was outstanding and proposal to settle – Whether letter amounted to unequivocal acknowledgment of debt – Whether right of action accrued on or before date of acknowledgment – Whether requirements of ss. 26(2) and 27 of Limitation Act 1953 fulfilled – Computation of 12-year period – Whether order for sale applied within applicable limitation period*

LAND LAW: *Foreclosure – Order for sale – Land charged as security to overdraft facilities – Borrower defaulted in repayment of facilities – Bank applied for foreclosure and order for sale of land – Land gazetted for compulsory acquisition prior to public auction – Land foreclosed and ordered to be sold at public auction – Successful bidder awarded compensation – Allegations of impropriety and questionable motives – Whether foreclosure action commenced by bank time-barred*

– Whether order for sale and public auction null and void in view of land acquisition proceedings – Whether enquiry to determine compensation nullity – National Land Code, ss. 254, 261, 264 & 418 – Land Acquisition Act 1960, s. 9 – Limitation Act 1953, ss. 26(2) & 27

LAND LAW: *Foreclosure – Order for sale – Public auction – Application for postponement of auction rejected by Land Administrator – Discretion of Land Administrator – Whether Land Administrator can reject application – National Land Code, s. 264(1) & (2)*

LAND LAW: *Malay reservations – Valuation – Valuation report for purpose of foreclosure proceedings – Chargee bank appointed valuer – Method of valuation adopted – Comparison method – Whether status of Malay Reserve Land would be taken into account in valuation for purpose of compulsory acquisition – Whether claim in negligence could be made against valuer in preparation of valuation report – Whether valuation of land credible and in accordance with prevailing market value*

By letters of offer dated 13 October 1996 and 20 January 1998, Bank Bumiputra Malaysia Bhd ('BBMB') approved an overdraft facility to one Md Shariff Hashim ('borrower') for the amount of RM40,000. The plaintiff's father, Mohd Nordin Yaakob ('Nordin') had charged his property which was a piece of land, as security for the facility in favour of BBMB. In 1999, the fourth defendant, CIMB Bank Bhd ('CIMB'), took over all rights of BBMB. Under the terms and conditions of the charge, Nordin agreed to pay on demand of CIMB, all sums and interests due and payable to CIMB. The borrower and Nordin both passed away in 2000. The plaintiff was granted letters of administration by the High Court. In 2015, CIMB issued a notice of default to the plaintiff, pursuant to s. 254 of the National Land Code ('NLC'), to claim the amount of RM133,737.55, inclusive of interests calculated as at 28 February 2015. As the plaintiff failed to remedy the default, CIMB instituted foreclosure proceedings. In 2018, CIMB applied to the first defendant, the Land Administrator ('LA'), for an order for sale and enclosed a valuation report valuing the land at RM1 million. The LA held an enquiry but the plaintiff was not present. The LA then granted the order for sale and fixed the date for public auction of the land with the reserve price of RM1 million. The plaintiff came to know of the order for sale and wrote to CIMB to request: (i) that the public auction be called off as he was not served with any notices pertaining to the said auction; (ii) for a detailed statement of accounts in order for him to forward a proposal to settle the amount outstanding. The plaintiff later forwarded a letter to CIMB, proposing to pay the amount of RM100,000 to settle the balance outstanding. Nonetheless, the auction could not be called off in spite of CIMB's attempts to postpone the same. A significant event had occurred prior to the public auction date: the land was gazetted for compulsory acquisition. The third defendant, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan) Negeri Selangor ('JKPTG') then issued notices to attend the requisite enquiry to

determine compensation. The enquiry to determine compensation was scheduled on 14 August 2018 but the enquiry did not proceed on the said date but was instead rescheduled to 27 September 2018. Meanwhile, the fifth defendant, Stigma Emas Sdn Bhd ('Stigma Emas'), successfully bid for the land and paid RM100,000 as the deposit. Following the bid, a contract of sale was executed between CIMB and Stigma Emas. Stigma later fully settled the balance purchase price of RM900,000 which payment was acknowledged by CIMB on 8 August 2018. On 27 September 2018, the enquiry to enquire compensation was held and JKPTG made an award of RM14,619,330.40 in favour of Stigma Emas. Following the above events, the plaintiff commenced the following actions against: (i) five parties, each of whom had a role in the foreclosure and acquisition proceedings ('Suit 36'). In Suit 36, CIMB issued a third party notice against Land Serve Sdn Bhd ('Land Serve'), seeking to be indemnified in the event it was found liable to the plaintiff ('third party claim'); and (ii) Land Serve and Tan Kim Seng ('TKS') who were the firm of valuers and the valuer, respectively, who prepared the valuation report for CIMB for the purpose of the foreclosure proceedings ('Suit 429'). Meanwhile, when the plaintiff learnt that JKPTG was in the midst of paying out the compensation award to Stigma Emas, he proceeded to file urgent *ex parte* application to restrain Stigma Emas from receiving the monies and for JKPTG to pay the monies into court. The High Court allowed the application and ordered that the compensation monies be paid and kept in court until the disposal of the plaintiff's claim. Suits 36 and 429 were consolidated and heard together and the issues that arose were: (i) whether the foreclosure action commenced by CIMB was time-barred; (ii) whether the plaintiff ought to have resorted to the provisions of s. 418 of the NLC to challenge the order for sale; (iii) whether the order for sale and public auction were null and void in view of the land acquisition proceedings; (iv) whether the enquiry to determine compensation to Stigma Emas was a nullity; (v) whether a claim in negligence could be made against Land Serve and TKS in the preparation of the valuation report; (vi) whether the valuation of the land was credible and in accordance with the prevailing market value; and (vii) whether the LA was wrong to reject the request to postpone the public auction.

Held (dismissing Suits 36 and 429 and third party claim):

(1) In response to the limitation point raised, *ie,* whether the proceedings commenced by CIMB for an order for sale was time-barred, CIMB referred to a letter by the plaintiff to CIMB dated 15 March 2007. This letter amounted to an unequivocal acknowledgment of the debt. There was a specific reference to the account of the borrower, an admission that the account was outstanding and a proposal to settle. Section 26(2) of the Limitation Act 1953 ('Limitation Act') recognises that the right of action in cases where the debtor acknowledges the claim shall be

deemed to have accrued on and not before the date of the acknowledgment. Section 27 of the Limitation Act further stipulates that the acknowledgment in question must be in writing and duly signed by the person making it. The requirements of ss. 26(2) and 27 of the Limitation Act had thus been fulfilled. The 12-year period for computation of limitation only began from 15 March 2007. The order for sale, having been applied for by CIMB on 19 April 2018, was within the applicable limitation period. The foreclosure action by CIMB was therefore not time-barred. (paras 42 & 45-48)

(2) The attempt of the plaintiff to impugn the order for sale by filing the instant suit was wholly misconceived. The order for sale was a culmination of the enquiry held by the LA under s. 261 of the NLC. If the plaintiff was aggrieved by the order for sale granted which he alleged was a nullity, he ought to utilise the remedy of appeal under s. 418 of the NLC. The plaintiff's grievance at the decision of the LA to grant the order for sale could have been ventilated and its merits considered had he filed an appeal. The High Court would then decide if the LA had properly exercised his powers under the NLC. It was now too late in the day to complain about the order for sale. By filing the present suit seeking declarations to the effect that the order for sale and the public auction was null and void, the plaintiff had clearly chosen the wrong forum to litigate his claim. (paras 52, 54 & 57)

(3) For some reason, there was no note of the intended acquisition upon the title pursuant to s. 9 of the Land Acquisition Act 1960 ('LAA'). The plaintiff contended that if JKPTG had duly performed its functions under s. 9 of the LAA, he would have known of the fact of the acquisition and would not have granted the order for sale. Nothing turned on the failure of JKPTG to make a note of the intended acquisition on the title. The more pertinent issue was whether once the land was gazetted for intended acquisition, it was a bar to the grant of the order for sale. The plaintiff was misconceived to contend that upon gazettement, no order for sale could be made. The acquisition, even though commenced, had not been completed. It was only completed and took effect when Form K under the LAA was issued. It was then that any dealings and transaction in respect of the acquired land would be prohibited. Formal possession *vide* Form K takes place only after an award has been made. At the date of the order for sale and subsequent public auction however, the date of compensation had not been determined. The plaintiff's challenge to the order for sale and the subsequent public auction on the basis that the land had been gazetted for acquisition could not stand. (paras 63-65 & 68-69)

(4) The plaintiff's contention that compensation ought not to be made to Stigma Emas as it was not the registered proprietor was untenable. The plaintiff attempted to draw inference of impropriety and questionable motives on the part of Stigma Emas and JKPTG in the conduct of the enquiry. The representatives of Stigma Emas and the officer from the JKPTG who testified at the trial were cross-examined vigorously in an attempt to elicit evidence from which an inference of impropriety could be drawn. Suspicion alone was not sufficient. In the absence of cogent evidence, credence was not given to the allegations. (paras 79 & 80)

(5) The law on the ingredients establishing negligence was trite. The elements comprising existence of duty of care and the breach and damages resulting must be proved. Land Serve was appointed by CIMB to value the land. The valuation was referred to for the purpose of fixing the reserve price at the auction. A chargor was at liberty to appoint his own valuer if he disagreed with the reserve price. It would not be in contemplation of TKS and Land Serve that the plaintiff would be relying on the valuation report. In foreclosure proceedings, a chargor is not expected to rely on the valuation of the chargee bank. In the circumstances, there was no relationship of proximity between Land Serve and the plaintiff for a duty of care to be owed to him. (paras 83, 88 & 89)

(6) TKS explained that: (i) the material date of the valuation was 19 July 2017; (ii) the land was a parcel of an agricultural land within the Malay Reservation Area and the method of valuation he adopted was the comparison method. Five comparables comprising Malay Reserve Land, were used and adjustments made based on factors such as size, location, terrain, tenure, restrictions in interest to arrive at the market value. TKS also added that there was a dearth of recent sales evidence of similar property within the immediate vicinity. Based on the comparables he considered, he arrived at the market value of RM1 million with a forced sale value of RM800,000; and (iii) in valuing a Malay Reserve Land taken in compulsory acquisition, the status of a Malay Reserve Land would not be taken into account. TKS' evidence in this regard was supported by the provisions under the LAA. The plaintiff adduced no evidence to rebut TKS' valuation of the land as a Malay Reserve Land. Therefore, TKS' valuation was accepted as it was arrived at by adopting the comparison method, which was an accepted method of valuation. (paras 92 & 94-96)

(7) It was not in dispute that there was an attempt by CIMB to present Form 16O of the NLC to vacate the auction date. The first attempt was made on 20 July 2018 and several attempts thereafter were also made. The LA's reason for rejection was that Form 16O was presented less than seven days before the auction date. There was no reason to fault the

LA's basis for rejecting Form 16O. The proviso to s. 264(1) of the NLC allowed him to reject the application to postpone the auction if the period stipulated therein was not complied with. Further, s. 264(2) of the NLC conferred upon the LA a discretion whether to approve or reject the application even if it was submitted within time. In the circumstances, the LA was not wrong in rejecting Form 16O so as to render the public auction a nullity. (paras 99-102)

(8) Stigma Emas being the successful bidder at the public auction was correctly awarded the compensation at the land acquisition enquiry. The compensation monies deposited into court amounting to RM14,619,330.40 was to be paid out to Stigma Emas. (paras 103 & 106)

Case(s) referred to:

Bank Kerjasama Rakyat Malaysia Bhd v. Pentadbir Tanah Daerah Sepang & Ors [1998] CLJU 247; [1998] 1 LNS 247 HC ***(refd)***

Caparo Industries Plc v. Dickman [1990] 2 AC 605 ***(refd)***

Credit Corp (M) Bhd v. Fong Tak Sin [1991] 1 CLJ (Rep) 69; [1991] 2 CLJ 871 SC ***(refd)***

Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor [2014] 7 CLJ 882 CA ***(refd)***

Jigarlal K Doshi v. Resolution Alliance Sdn Bhd & Anor Appeal [2012] CLJU 811; [2012] 1 LNS 811 CA ***(refd)***

JW Properties Sdn Bhd v. Perbadanan Kemajuan Pertanian Selangor & Anor [2016] 1 CLJ 13 CA ***(refd)***

Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd [2023] 1 CLJ 495 CA ***(refd)***

Land Executive Committee Of Federal Territory v. Syarikat Harper Gilfillan Bhd [1980] CLJU 150; [1980] 1 LNS 150 FC ***(refd)***

Lee Gee Pheng v. RHB Bank Bhd [2003] 4 CLJ 639 CA ***(refd)***

Lim Ban Hooi & Anor v. Malayan Banking Bhd [2018] 6 CLJ 545 CA ***(refd)***

Loh Seng Lee v. Yunley Enterprise Sdn Bhd & Anor And Another Appeal [2009] 3 CLJ 486 CA ***(refd)***

Lok Kok Beng & Ors v. Loh Chiak Eong & Anor [2015] 7 CLJ 1008 FC ***(refd)***

Peh Lai Huat v. MBf Finance Bhd [2009] 5 CLJ 69 CA ***(refd)***

Pentadbir Tanah Daerah Kuala Muda, Sungai Petani, Kedah & Anor v. OBS Development Sdn Bhd And Third Party [1995] MLJU 197 ***(refd)***

QM Resources Sdn Bhd v. Parade Hotel Sdn Bhd & Ors [2020] 5 CLJ 182 CA ***(refd)***

Sangka Chuka & Ors v. Pentadbir Tanah Daerah Mersing Johor & Ors [2014] CLJU 734; [2014] 1 LNS 734 HC ***(refd)***

Sivakadatcham P Sethuram Vandayar v. CIMB Bank Bhd (Previously Known As Bumiputera-Commerce Bank Bhd) [2019] 6 CLJ 504 CA ***(refd)***

Smith v. Eric S Bush (A Firm) [1990] 1 AC 831 ***(dist)***

Sri Rimba Mentari Development Sdn Bhd v. Southeast Asia Special Asset Management Bhd (SEASAM) [2019] 8 CLJ 322 CA ***(refd)***

Thameez Nisha Hasseem v. Maybank Allied Bank Bhd [2023] 5 CLJ 874 FC ***(refd)***

Wan Zubaidah Wan Mahmood (As The Representative Of The Estate Of Nik Ab Rahman Nik Mat, Deceased) & Anor v. CIMB Bank Bhd [2019] 8 CLJ 197 CA ***(refd)***

Wong Soon Kion v. CIMB Bank Bhd [2018] CLJU 1689; [2018] 1 LNS 1689 CA ***(refd)***

Yee Weng Kai v. Yam Kong Seng & Anor [2013] 4 CLJ 493 CA ***(refd)***

Legislation referred to:
National Land Code, ss. 254, 261, 264(1), (2), 264A, 418
Land Acquisition Act 1960, ss. 9, 14, 22, 23
Limitation Act 1953, ss. 21(1), 26(2), 27

(Writ Summons No: BA-21NCVC-36-06-2019)
For the plaintiff - Yusman Mohd Badar & Muhammad Nazmi Hanafi; M/s Yusman Azlin Anwar
For the 1st & 2nd defendants - Husna Abdul Halim; FC
For the 3rd defendant - Noerazlim Saidil; SFC
For the 4th defendant - Tengku Nazihah Hanis Abd Nawawi & Joycelyn Keziah Victor George
For the 5th defendant - Wan Roslan Wan Ismail; M/s Roslan, Hazratul, Azman & Hisyam
For the 3rd party - Harvinder Singh; M/s Harvinder Singh & Co

(Writ Summons No: BA-22NCVC-429-10-2019)
For the plaintiff - Yusman Mohd Badar & Muhammad Nazmi Hanafi; M/s Yusman Azlin Anwar
For the 1st & 2nd defendants - Harvinder Singh; M/s Harvinder Singh & Co

Reported by Lina E

JUDGMENT

Alice Loke Yee Ching J:

Introduction

[1] The plaintiff is the administrator of the estate of one Mohd Nordin bin Yaakob ("Nordin"). The plaintiff's case in a nutshell, is this. Nordin's land was charged as security to CIMB in respect of the overdraft facilities granted to Md Shariff bin Hashim. He defaulted in the repayment of the facilities causing Nordin's land to be foreclosed and ordered to be sold at a public auction.

[2] However, prior to the public auction, Nordin's land was gazetted for compulsory acquisition. The fifth defendant successfully bid for Nordin's land at the public auction. At the enquiry to determine compensation, the Land Administrator awarded compensation to the fifth defendant, as it had fully paid for the purchase price of Nordin's land.

[3] The plaintiff now seeks to the nullify the sale of Nordin's land at the public auction and the award of compensation to the fifth defendant.

The Salient Facts

[4] The factual matrix comprising the chronology of events giving rise to the claim, is largely undisputed. The documentary evidence speaks for itself.

[5] By letters of offer dated 13 October 1996 and 20 January 1998, Bank Bumiputra Malaysia Berhad approved an overdraft facility to Md Shariff bin Hashim ("borrower") for the amount of RM40,000.

[6] As security for the facility, Nordin charged his property which was a piece of land held under Lot No 2034 GM 2468 Mukim Hulu Langat Negeri Selangor ("the land") in favour of Bank Bumiputra Malaysia Berhad. The charge was registered on 24 January 1994.

[7] By a vesting order dated 3 September 1999, the fourth defendant ("CIMB"), took over all rights of Bank Bumiputra Malaysia Berhad.

[8] Under the terms and conditions of the charge, Nordin agreed to pay, on demand of CIMB, all sums and interests due and payable to CIMB.

[9] The borrower passed away on 23 January 2000. Nordin also passed away soon thereafter, on 15 March 2000. The plaintiff, who was Nordin's son, was granted letters of administration by the High Court at Kuala Lumpur on 6 October 2004.

[10] On 20 April 2015, CIMB issued a notice of default in Form 16D to the plaintiff pursuant to s. 254 of the National Land Code, to claim the amount of RM133,737.55 inclusive of interest calculated as at 28 February 2015. The plaintiff was informed that he was required to remedy the default within seven days.

[11] The default was not remedied, prompting CIMB to institute foreclosure proceedings. By letter dated 19 April 2018 to the first defendant ("Land Administrator ") CIMB enclosed *inter alia*, Form 16G and a valuation report dated 24 July 2017 prepared by Land Serve Sdn Bhd valuing the land at RM1,000,000 to apply for an order for sale.

[12] Consequent thereto, the Land Administrator issued a Saman Kepada Penggadai Supaya Hadir Dalam Siasatan di bawah Seksyen 216 to attend an enquiry on 21 June 2018.

[13] On 21 June 2018, the day appointed for the enquiry, plaintiff was not present. The Land Administrator granted the order for sale in Form 16H and fixed the date for public auction of the land on 26 July 2018 with the reserve price of RM1,000,000.

[14] The plaintiff came to know of the order for sale soon thereafter and wrote to CIMB on 5 July 2018 to request that the public auction be called off as he was not served with any notices pertaining to the said auction. He also requested for a detailed statement of accounts in order that he could forward a proposal to settle the amount outstanding.

[15] On 19 July 2018, the plaintiff forwarded a letter to CIMB proposing to pay the amount of RM100,000 to settle the balance outstanding.

[16] Nonetheless, the auction could not be called off in spite of CIMB's attempts to file Form 16O to postpone the auction. The Land Administrator rejected the Form 16O as it filed later than 19 July 2018, being the last date to present the form.

[17] On 26 July 2018, the fifth defendant ("Stigma Emas") successfully bid for the land. Stigma Emas paid RM100,000 as deposit towards the purchase price of the land. Following the bid, a contract of sale was executed between CIMB's solicitors and a representative from Stigma Emas. A

[18] A significant event occurred prior to the public auction date. On 29 March 2018, the land was gazetted for acquisition *vide* Selangor State *Gazette* No. 1311 in respect of Pengambilan Tanah di bawah s. 8 Akta Pengambilan Tanah 1960 bagi Projek Skim Bekalan dan Pengagihan Air Langat 2-Fasa 1 (Cadangan Tapak Pelupusan Enap Cemar untuk Loji Rawatan Air Langat 2). Pursuant to the provisions of the Land Acquisition Act 1960, the Land Administrator therein issued notices to attend the requisite enquiry to determine compensation. It must be mentioned that the Land Administrator in the Land Acquisition Act 1960 comes under the purview of the third defendant, and is a different entity from the first defendant. I shall therefore refer to the Land Administrator exercising functions in land acquisition proceedings in the same manner it was cited as the third defendant, *ie*, "JKPTG". B C D

[19] The enquiry to determine compensation was scheduled on 14 August 2018. However, the enquiry did not proceed on 14 August 2018 and was instead re-scheduled to 27 September 2018.

[20] Meanwhile, following the successful bid at the public auction, Stigma Emas fully settled the balance price of RM900,000 which payment was acknowledged by CIMB on 8 August 2018. E

[21] On 27 September 2018, the enquiry to determine compensation was held. JKPTG made an award of RM14,619,330 in favour of Stigma Emas, evident by the issuance of Form H under the Land Acquisition Act 1960. The land was valued at RM671 per square metre, and its total market value was computed at RM13,746,777. A further amount of RM872,553.40 was awarded as costs for a replacement site. F

[22] Following the above events, in October 2018, the plaintiff through his solicitors, issued notices of demand to the defendants in Suit 36 alleging, *inter alia*, impropriety and irregularities on the part of the defendants. G

[23] The plaintiff then filed Originating Summons No: BA-24NCVC-1319-10/2018 which was eventually converted into a writ action *vide* Writ of Summons No: BA-21NCVC-36-06/2019 ("Suit 36") by order of the High Court on 13 June 2019. The plaintiff sues five parties in Suit 36, each of whom had a role in the foreclosure and acquisition proceedings. H

[24] Subsequent to Suit 36, the plaintiff filed Writ of Summons No: BA-22NCVC-429-10/2019 ("Suit 429"), against Land Serve Sdn Bhd ("Land Serve") the firm of valuers and Tan Kim Seng ("TKS"), the valuer who prepared the valuation report for CIMB for the purpose of the foreclosure proceedings. TKS is in the employment of Land Serve. I

[25] Meanwhile, in Suit 36, CIMB issued a third-party notice dated 6 September 2019 against Land Serve seeking to be indemnified in the event it is found liable to the plaintiff.

[26] Sometime in December 2019, the plaintiff learnt that JKPTG was in the midst of paying out the compensation award to Stigma Emas. He then filed two urgent *ex parte* applications to restrain Stigma Emas from receiving the monies and for JKPTG to pay the monies into court.

[27] The High Court granted both orders on 18 December 2018 and 19 December 2018 respectively. Both orders were confirmed at the subsequent *inter partes* hearing. The learned High Court Judge ordered the compensation monies to be paid and kept in court until the disposal of the plaintiff's claim.

[28] On 13 February 2020, Suit 36 and Suit 429 were ordered to be consolidated and heard together.

The Plaintiff's Claim

[29] The plaintiff is essentially seeking to impugn the order for sale, the public auction and the land acquisition enquiry awarding compensation to Stigma Emas by seeking declarations to the effect that the various actions taken by the Land Administrator, JKPTG and CIMB from the commencement of the foreclosure action culminating in the public auction are defective, null and void. These in turn affect the title of Stigma Emas to the land, and consequently its entitlement to the compensation monies.

[30] The plaintiff's pleaded case against the defendants can be summarised as follows:

(i) in respect of the Land Administrator;

(a) failed to serve the summons to attend the inquiry to show cause on the plaintiff;

(b) failed to accept Form 16O to postpone the auction; and

(c) failed to take into consideration the fact that the land had already been gazetted for acquisition prior to making the order for sale.

I note that the plaintiff did not make any specific allegation against the second defendant, the Director of Land and Mines.

(ii) in respect of JKTPG;

(a) failed to serve notices on the registered proprietor of the land, namely Nordin, to inform of the enquiry on 14 August 2018 and 27 September 2018, before making the award of compensation;

(b) failed to make a note of the intended acquisition on the title of the land as required under s. 9 of the Land Acquistion Act 1960; and

(c) acted improperly and wrongly in determining compensation to Stigma Emas to the detriment of the plaintiff.

(iii) in respect of CIMB;

(a) the foreclosure proceedings instituted was time-barred;

(b) the computation of the amount claimed is questionable;

(c) failed to serve the requisite notices on the enquiry to show cause on either Nordin the registered proprietor, or his estate; and

(d) the valuation report relied on for the public auction was not credible.

(iv) in respect of Stigma Emas;

(a) not entitled to the compensation for land acquisition; and

(b) questionable conduct on the part of Stigma Emas and JKPTG prior to the enquiry for compensation which is suggestive of improper motives in determining compensation to Stigma Emas.

(v) in respect of Land Serve and TKS;

(a) negligence in grossly undervaluing the land at RM1,000,000, thus causing the reserve price to be fixed at that amount at the public auction.

[31] The plaintiff seeks to be granted various reliefs set out in the pleadings and reproduced *in extenso* in the written submission of counsel. I observe that the reliefs in the nature of declarations and orders, have been stated in a convoluted and confusing fashion; some are repetitious, some overlapping and the rest are consequential orders which have been unnecessarily pleaded. There are also reliefs which in essence, are grounds upon which the suit is premised, rather than actual reliefs in substance. Ultimately, what is sought can be reduced to declarations to the effect that the order for sale, public auction and award of compensation are null and void.

[32] In addition to the declaratory orders, the plaintiff also seeks to be compensated in general, special and exemplary damages.

The Defence Of The Defendants

[33] The defendants deny all the allegations. They contend that all actions taken have been in due compliance with the law. Further, both the Land Administrator and CIMB contend that instead of seeking to impugn the order for sale now, the plaintiff ought to have resorted to the provision on appeal under s. 418 of the NLC. CIMB also denies the foreclosure proceedings was time barred as the plaintiff had acknowledged the debt by letter dated 15 March 2007. Both JKPTG and Stigma Emas deny that the enquiry was not duly conducted in accordance with law. They contend that the award of compensation was correctly decided in favour of Stigma Emas. As for Land

Serve and TKS, they claim that no duty of care was owed by them to the plaintiff in preparing the valuation report. Even if a duty of care is owed, the valuation arrived at was proper and in accordance with accepted methods of valuation.

Issues For Determination

[34] Notwithstanding the extensiveness of the pleaded case, I am of the view that the determination of this case rests on the following primary issues:

(i) whether the foreclosure action commenced by CIMB was time-barred;

(ii) whether the plaintiff ought to have resorted to the provisions of s. 418 of the NLC to challenge the order for sale;

(iii) whether the order for sale and consequently the public auction, are null and void in view of the land acquisition proceedings;

(iv) whether the enquiry to determine compensation to Stigma Emas is a nullity;

(v) whether a claim in negligence can be made against Land Serve and TKS in the preparation of the valuation report; and

(vi) whether the valuation of the land was credible and in accordance with the prevailing market value.

Analysis And Decision Of This Court

Whether The Proceedings Commenced By CIMB For An Order For Sale Is Time-barred

[35] Nordin passed away in 2000. The loan taken by the borrower was categorised as a non-performing loan on 20 July 2000. This is evident from CIMB's document titled Penyata Hutang Bagi Siasatan Pada 21 June 2018 Di Pejabat Tanah Dan Daerah Hulu Langat, Selangor prepared for the purpose of the enquiry by the Land Administrator. In view of this, the plaintiff contends that the foreclosure proceeding were instituted well after 12 years from the time the debt was due. This has caused it to become statute-barred.

[36] The plaintiff relies on s. 21(1) of the Limitation Act 1953 in support. For ease of reference, the provision is set out as follows:

> Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land
>
> 21. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of twelve years from the date when the right to receive the money accrued.

[37] The rationale for limitation of actions is well settled. It is premised on the presumption that a right not exercised for a long time is non-existent, and the consideration that matters of right in general should not be left too long in a state of uncertainty or doubt or suspense. It is to serve the primary object of discouraging plaintiffs from sleeping on their actions and more importantly, to have a definite end to litigation. (See: *Credit Corp (M) Bhd v. Fong Tak Sin* [1991] 1 CLJ (Rep) 69; [1991] 2 CLJ 871; [1991] 1 MLJ 409).

[38] At one time, the issue as to computation of time for actions under s. 21(1) of the Limitation Act 1953 had cases decided on both sides of the divide. There were decisions that held limitation to run from the date of default in repayment (see: *Lim Ban Hooi & Anor v. Malayan Banking Bhd* [2018] 6 CLJ 545; *Wan Zubaidah Wan Mahmood (As The Representative Of The Estate Of Nik Ab Rahman Nik Mat, Deceased) & Anor v. CIMB Bank Bhd* [2019] 8 CLJ 197; *Sivakadatcham P Sethuram Vandayar v. CIMB Bank Bhd (Previously Known As Bumiputera-Commerce Bank Bhd)* [2019] 6 CLJ 504 and *Sri Rimba Mentari Development Sdn Bhd v. Southeast Asia Special Asset Management Bhd (SEASAM)* [2019] 8 CLJ 322) whilst there were those that held it to run from the expiry of the period to make good the default as specified in Form 16D of the NLC. (See: *Jigarlal K Doshi v. Resolution Alliance Sdn Bhd & Anor Appeal* [2012] CLJU 811; [2012] 1 LNS 811; [2013] 3 MLJ 61; *Wong Soon Kion v. CIMB Bank Bhd* [2018] CLJU 1689; [2018] 1 LNS 1689; [2018] MLJU 1847; *Peh Lai Huat v. MBf Finance Bhd* [2009] 5 CLJ 69; [2011] 3 MLJ 470).

[39] The Federal Court case of *Thameez Nisha Hasseem v. Maybank Allied Bank Bhd* [2023] 5 CLJ 874; [2023] MLJU 1044 has now set the matter to rest when it decided that the period of limitation in s. 21(1) begins from the date of the failure to repay the debt and not from the failure to remedy the 16D notice. It reasoned that a correlation exists between the 16D notice and the default in repayment, and held as follows:

> [111] We cannot but agree with the above observation because the 16D Notice can never be issued without there being a default in repayment first. And because certainty is important in the law of limitations, the date of the failure to pay is certain as compared to when the 16D Notice is issued – for such issuance is dependent upon the chargee's discretion. This point is what the Court of Appeal noted in *Lim Ban Hooi*:
>
> > [65] If the time period of 12 years runs only from when the chargee decides to issue the Form 16D notice and then only after the failure to remedy the default, as is suggested in the case of Peh Lai Huat and Jigarlal, the time requirements of 'at least one month or such other alternative period as may be specified in the charge' mentioned in s. 253, would have been rendered meaningless and of no effect. If the time period of 12 years does not run from when the breach of the agreement took place whence the right to receive

A money accrued has been disaffected, a chargee may well decide not to do anything for the next 100 years, and still be in time to enforce the *ad rem* right of order of sale.

[66] The laws of limitation are intended to protect the rights of all parties concerned. These laws lend certainty and confidence to the
B enforcement and safeguarding of rights and remedies and recourse to the courts, preventing abuse through the principle of laches.

[112] Based on the foregoing, we are of the considered view that the period of limitation in section 21(1) begins from the date of the failure to repay the debt and not from the failure to remedy the 16D Notice.

C **[40]** The Federal Court also opined that the provisions of the Limitation Act 1953 equally apply to an order for sale at the land office, as in this instance (See also: *Wan Zubaidah Wan Mahmood & Anor v. CIMB Bank Bhd* [2019] 8 CLJ 197; [2018] 6 MLJ 460).

D **[41]** Premised on the case of *Thameez Nisha Hasseem* (*supra*) the plaintiff contends that the latest date the cause of action accrued would be 20 July 2000, as the loan was already categorised as a non-performing loan then. The foreclosure action ought to have been commenced before 20 July 2012.

E **[42]** In response to the limitation point raised, CIMB referred to a letter by the plaintiff to CIMB dated 15 March 2007. This letter is a vital piece of evidence as the plaintiff acknowledges that the loan taken by Shariff had been in default. As the contents are material, it is hereby reproduced below.

Adzhar Bin Mohd Nordin
A401, Kelana Parkview,
F No 1 Jalan SS 6/2
Kelana Jaya
47301 Petaling Jaya

Your Ref: 1418 00098 22050

Date: 15th March 2007

G CLMB BANK BERHAD
(formerly known as Bumiputera Commerce Bank Berhad)
Retail Collection & Recovery
14th Floor, Menara Atlas,
Plaza Pantai, 5 Jalan 4/83A
Off Jalan Pantai Baru
H 59200 Kuala Lumpur

Attention: Cik Fauziah Cik Lat

Dear Madam,

RE: Account Number : 1418 00098 22050
I Borrower Name : Md Shariff Bin Hashim (I.C No: 3817866)
Loan Amount : RM40,000.00

The above matter refers.

I wish to inform you that the above loan is currently under the above said name and currently has been in default for quite some time. For your information, the above said borrower passed away in January 2000. The above said loan has a collateral of one plot of land under EMR 5435 Lot No 2034, Mukim Daerah Hulu Langat. The owner of the plot of land is under Encik Mohd Nordin Bin Haji Yaakob (who is also my father). Please take note that Encik Mohd Nordin Bin Haji Yaakob has also passed way in March 2000.

I had gone through the legal process of obtaining the Grant of Letter of Administration through the Kuala Lumpur High Court and was successfully granted the approval on the 21st October 2004. As such, I am currently the administrator for all the estate under Encik Mohd Nordin Bin Haji Yaakob. (a copy of the letter is enclosed for your attention)

I have discussed this matter at length with my mother and my brothers about this plot of land and we have decided that we have no other alternative but to discuss with you on how to resolve this long outstanding issue.

We hereby would like to propose to you that we are proposing for a 50% settlement from the above loan amount. The above said loan should be settled by giving personal or term loan under my name and my elder brother. My youngest brother and my mother is unemployed, as such the burden to resolve this issue will be borne by us. In the event that you agree to our proposal, feel free to liaise with the undersigned.

Your attention towards this matter is fully appreciated.

Thank You.

Yours Faithfully

...

Adzhar Mohd Nordin
(670919-10-5565)
Tel No: 019-2380434

[43] CIMB contends that this letter is tantamount to an acknowledgment of the debt, which in turn attracts the application of s. 26(2) of the Limitation Act 1953. I agree with the contention.

[44] The provision is set out below:

Fresh accrual of action on acknowledgment or part payment

26. (1) Where there has accrued any right of action to recover land or to enforce a mortgage or charge in respect of land or personal property, and:

(a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

A (b) in the case of any such action by a mortgagee or charge the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether principal or interest, the right shall be deemed to have accrued on and not before the date of the acknowledgment or last payment.

B (2) **Where any right of action has accrued to recover any debt or other liquidated pecuniary claim**, or any claim to the personal estate of a deceased person or to any share or interest therein, **and the person liable or accountable therefor acknowledges the claim** or makes any payment in respect thereof, the right shall be deemed to have accrued on and not C before the date of the acknowledgment or the last payment:

...

(emphasis added)

[45] Section 26(2) of the Limitation Act 1953 therefore recognises that the D right of action in cases where the debtor acknowledges the claim shall be deemed to have accrued on and not before the date of the acknowledgment. In *Yee Weng Kai v. Yam Kong Seng & Anor* [2013] 4 CLJ 493; [2013] 2 MLJ 575, the Court of Appeal held:

[15] What amounts to a valid acknowledgment of debt can be found in E the *dicta* of Lord Denning MR in *Good v. Parry* [1963] 2 All ER 59, wherein His Lordship observed:

> In order to be an acknowledgement, however, the debt must be quantified in figures or at all events, it must be liquidated in this sense that it is capable of ascertainment by calculation, or by F extrinsic evidence, without further agreement between the parties. For instance: 'I admit I owe you the sum shown in this rent book' would be a perfectly good acknowledgement, for it only needs to be calculated. Again in *Jones v. Bellgrove Properties, Ltd* (5), the balance sheet contained the acknowledgement: 'To sundry creditors 7,638 s. 10d'. It was possible by extrinsic evidence to sort G out the various items in that lump sum, and it was held to be a sufficient acknowledgement. But if the debt is not quantified and is not ascertainable without further agreement, then there is no acknowledgement sufficient to satisfy the statute.

[16] The point was made clearer by the Federal Court in *Wee Tiang Teng* H *v. Ong Chong Hooi & Anor* [1978] 2 MLJ 54, wherein Suffian LP said, at p 56:

> ... With respect we are of opinion that the letter in question was not a sufficient acknowledgement within our s. 26(2). By it the defendants acknowledged that a claim had been made against them, they did not acknowledge that they were indebted to the I plaintiff, and even if it was an acknowledgement the debt acknowledged was not quantified in figures nor was it capable of

ascertainment by counterclaim or by extrinsic evidence without further agreement of the parties. In consolidated *Agencies Ltd v. Bertram Ltd* the Privy Council at p. 482 approved the following statement of an author on the law of limitation:

> To take a demand out of the statute of limitation on the ground of acknowledgement, the language of the debtor must amount to an unequivocal admission of a subsisting debt that is, subsisting at the time of its acknowledgement.

[17] In short, in order to constitute a valid acknowledgment for the purpose of s. 26(2) of the Limitation Act 1953 there must be evidence to show that there was unequivocal admission of a subsisting debt by the defendant at the time of the acknowledgment (see *Kwong Yik Bank Bhd v. Kwan Chew Holdings Sdn Bhd* [2011] 2 CLJ 269; [2009] MLJU 632, Court of Appeal decision).

[46] The acknowledgment in question must be in writing and duly signed by the person making it. (See: s. 27 of the Limitation Act 1953).

[47] I am of the view that the plaintiff's letter dated 15 March 2007 amounts to an unequivocal acknowledgment of the debt. There is a specific reference to the account of the borrower, an admission that the account is outstanding and a proposal to settle. I find the requirements of s. 26(2) and s. 27 of the Limitation Act 1953 to have been fulfilled.

[48] In the circumstances, the 12-year period for computation of limitation only began from 15 March 2007. The order for sale having been applied for by CIMB on 19 April 2018 *vide* Form 16G, was within the applicable limitation period. The foreclosure action by CIMB is therefore not time-barred.

Failure To Appeal Under Section 418 Of The National Land Code ("NLC")

[49] On 21 June 2018, upon being satisfied that the summons to appear at the inquiry was duly served on the plaintiff, the Land Administrator proceeded with the hearing exparte and granted the order for sale in Form 16H.

[50] The plaintiff now challenges the validity of the Land Administrator's order for sale, contending it to be a nullity for the following reasons:

(i) the plaintiff was not properly served with the summons to appear at the inquiry by the Land Administrator;

(ii) the plaintiff was not served with the requisite notices pertaining to the foreclosure action by CIMB;

(iii) the computation of the amount claimed by CIMB in its statement of accounts given to the Land Administrator was wrong; and

(iv) the reserve price was determined by a valuation that was not credible.

[51] Both the Land Administrator and CIMB contend that these issues ought to have been ventilated by filing an appeal under s. 418 of the NLC against the order for sale. It is not open to the plaintiff to raise these issues in the present suit by seeking the remedy of declarations.

[52] I find that the attempt of the plaintiff to impugn the order for sale by filing the instant suit is wholly misconceived. The order for sale was a culmination of the inquiry held by the Land Administrator under s. 261. If he was aggrieved at the order for sale granted which he alleges is a nullity based on the foregoing reasons, the plaintiff ought to utilise the remedy of appeal under s. 418 of the NLC. But he did not.

[53] The provisions of s. 418 are as set out below:

> 418. Appeals to the Court.
>
> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section "decision" includes any act, omission, refusal, direction or order.

[54] The plaintiff's grievance at the decision of the Land Administrator to grant the order for sale on the grounds stated in paras. 50(i) to (iv) above could have been ventilated and its merits considered had he filed an appeal. The High Court will then decide if the Land Administrator had properly exercised his powers under the NLC. As matters now stand, it is too late in the day to complain about the order for sale.

[55] The judgment in the case of *Lee Gee Pheng v. RHB Bank Bhd* [2003] 4 CLJ 639; [2004] 1 MLJ 618 is particularly instructive. There, the order for sale issued by the Land Administrator was not appealed against pursuant to s. 418 of the NLC but was subsequently challenged in a suit filed in the High Court. The Court of Appeal held:

> Since all the requirements to obtain the first order for sale of the land held under land office title had been duly complied with and no challenge had ever been made against it, the appellant could not at the originating summons stage question the merits of the first order for sale granted by the Land Administrator. The appellant could have appealed to the High Court under s. 418 of the Code which she initially did only to withdraw it later. It follows therefore that the validity of the first order for sale cannot now be challenged.

[56] In *Loh Seng Lee v. Yunley Enterprise Sdn Bhd & Anor And Another Appeal* [2009] 3 CLJ 486; [2009] 2 MLJ 242, an originating summons was filed for a declaration that the auction was null and void *ab initio* as the application in Form 16G by the chargee bank for an order to sell two pieces of land together was defective. The Court of Appeal held:

> We were of the view that a decision or direction by the Land Administrator to auction the two pieces of land together was a 'decision' within the definition of s. 418(3) of the NLC. On the proper reading of s. 418(1) of the NLC, the correct course of action for the respondent to take was to file an appeal, of which it had failed to undertake, instead of taking the circuitous route (*Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234).

[57] By filing the present suit seeking for declarations to the effect that the order for sale and the public auction was null and void, the plaintiff had clearly chosen the wrong forum to litigate his claim.

[58] Even though the plaintiff was not present on 21 June 2018 when the Land Administrator issued the order for sale, he was aware of it soon thereafter. I refer to the averments in the plaintiff's own affidavit in support of Originating Summons No: BA-24NCVC-1319-10/2019 prior to the suit being converted into a writ action in Suit 36 (and now directed to stand as pleadings) stating as follows:

(i) that he received the summons to appear at the enquiry on 22 June 2018;

(ii) on 25 June 2018 he requested the Land Administrator to adjourn the public auction; and

(iii) in early July he received a notification in Form 16H from the Land Administrator that the public auction was to be held on 26 July 2018 prompting him to write to the Land Administrator on 19 July 2018 to offer a payment of RM100,000 to settle the debt.

[59] Therefore, as early as 25 June 2018, the plaintiff was already aware of the order for sale. However, he filed the originating summons only on 25 October 2018. By then, he was clearly out of time to proceed under s. 418 of the NLC. Although the intitulement of the originating summons cites s. 418 of the NLC, it cannot be considered an appeal as the parties sued included CIMB and Stigma Emas with substantive allegations against them. The originating summons was later amended to also include the Director of Land and Mines and JKPTG.

[60] Parliament has in enacting s. 481 of the NLC, intended the right to appeal to be exclusive of any other mode of enforcing it. The time limit is the foundation of the right given in the section and must be observed. The period of three months is obviously for the purpose of preventing stale claims. (See: *Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd* [1980] CLJU 150; [1980] 1 LNS 150; [1981] MLJ 234).

[61] I am inclined to think that this suit was to circumvent the obstacle faced in failing to comply with the three months period to file an appeal under s. 418. (See: *Sangka Chuka & Ors v. Pentadbir Tanah Daerah Mersing Johor & Ors* [2014] CLJU 734; [2014] 1 LNS 734; [2015] 7 MLJ 480).

[62] In view of the plaintiff's failure to resort to s. 418 of the NLC, this puts paid to the other challenges raised pertaining to service of notices by the Land Administrator and CIMB, and the incorrectness in the amount claimed. I do not find it necessary to deal with these issues.

Whether The Order For Sale And Consequently The Public Auction, Are Null And Void In View Of The Land Acquisition Proceedings

[63] It is not in dispute that at the date of the order for sale, a declaration in Form D that the land was intended to be taken in acquisition had been published in the Selangor State *Gazette* No. 1311 dated 29 March 2018. For some reasons, there was no note of the intended acquisition upon the title pursuant to s. 9 of the Land Acquisition Act, 1960. This fact was not disputed by JKPTG and the Land Administrator at the trial. The plaintiff claims that if JKPTG had duly performed its functions under s. 9, the Land Administrator would have known of the fact of acquisition and would not have granted the order for sale.

[64] I am of the view that nothing turns on the failure of JKPTG to make a note of the intended acquisition on the title. The more pertinent issue is whether once the land was gazetted for intended acquisition, it is a bar to the grant of the order for sale.

[65] The plaintiff is misconceived to contend that upon gazettement, no order for sale can be made. The acquisition even though commenced, had not been completed. It is only completed and takes effect when Borang K under the Land Acquisition Act, 1960 is issued. It is at that date that formal possession is taken (see: s. 22 of the Land Acquisition Act 1960) and the land is considered to have been acquired.

[66] I am fortified in my view by the cases that have decided on this issue. In *Pentadbir Tanah Daerah Kuala Muda, Sungai Petani, Kedah & Anor v. OB S Development Sdn Bhd And Third Party* [1995] MLJU 197, the public auction was sought to be set aside on the grounds that on the date of the auction, one of the lands sold was the subject matter of a gazetted declaration for acquisition. Vincent Ng J was of the view that the acquisition is only completed upon the taking of formal possession under s. 22 and a memorial made under s. 23, giving the basis for so finding as follows:

> On proper reading of section 8, I hold that the date of gazetting of the Declaration should not be taken as the effective date of acquisition under our law. Such Declaration is merely an announcement that the State Authority has decided that the land concerned is needed for the purposes referred to in section 3 of the Act. Rather, the date when acquisition is deemed to have been effected should be the date when the Collector

> makes a memorial, in respect of the scheduled land to vest same in the State Authority, which must necessarily be accompanied by the taking of formal possession of the land concerned. Though, be it noted that both such acts may coincide with the gazetting of the declaration under section 8, this may not invariably be so.
>
> ...
>
> In my considered view, it is at the point in time when the crucial and vital procedures required under sections 22 and 23 have been complied with that the acquisition takes legal effect and date of such compliance is the date that is to be taken as the acquisition date. It would be quite irrational for this Court to take a different view in this regard as a *fortiori*, under Section 35(1) of the Act the State Authority still retains "liberty to withdraw from the acquisition of any land of which possession has not been taken", upon the payment of some compensation of damages, if any. The non-crucial significance of the gazetting of a declaration under section 8(1) can also be seen from the provision in section 8(4) of the Act, which provides that such declaration shall lapse and cease to be of any effect on the expiry of 2 years after the date of its publication in the *Gazette* if the Collector has not made an award under subsection (1) of section 14 within that period and, accordingly, "all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect". Thus, upon reading section 8(4) in conjunction with section s. 35 of the Act, it would appear possible and indeed permissible for the State Authority to *Gazette* the declaration under section 8(1) and then wait for a period not exceeding 2 years before taking formal possession of the land by serving the notice in Form K under section 22 and making the memorial under section 23 of the Act.

[67] The legal effect of Borang K was discussed in *Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882; [2015] 2 MLJ 126. Borang K was issued on 11 March 1974, but was not endorsed on the title. The land was transferred by the registered proprietor to his father on 24 October 1975. The Court of Appeal held:

> [39] We are of the view that upon the issuance of Borang K on 11 March 1974, the land had vested in the state authority notwithstanding that there was an omission to endorse the memorial on the title, a requirement under s. 23 of the Act. We agree with the conclusion of the learned trial judge that the requirement for an endorsement of the memorial was a formality and the omission to do so did not invalidate the acquisition process. As such, the purported transfer of the land in 1975 to the appellant's father and in 1992 to the appellant were void and ineffective. The acquisition process had ended in 1974.

[68] Premised on the position of law in the above cases, the issuance of Borang K is the effective act of acquisition. It is then that any dealings and transaction in respect of the acquired land will be prohibited. Formal possession *vide* Borang K takes place only after an award has been made.

(See: s. 14 of the Land Acquisition Act 1960). At the date of the order for sale, and subsequent public auction, the award of compensation had not even been determined. It was only determined on 27 September 2018.

[69] Consequently, the plaintiff's challenge to the order for sale and subsequent public auction on the basis the land had been gazetted for acquisition, cannot stand.

Whether The Enquiry To Determine Compensation To Stigma Is A Nullity

[70] The plaintiff seeks to impugn various actions taken by JKPTG in conducting the enquiry, evident from the declarations against the third defendant. He alleges that JKPTG failed to serve Form E notifying of the first date for enquiry fixed on 24 May 2018, failed to allow him to participate in the enquiry for compensation on 14 August 2018 and wrongfully making an award to Stigma as it was not the registered proprietor at the time it made the award of compensation on 27 September 2018.

[71] The plaintiff's complaint is that the non-service of Form E to attend the enquiry initially scheduled on 24 May 2018 was tantamount to a failure to comply with the provisions of the Land Acquisition Act 1960. However, I note that the enquiry did not proceed on this date. It was re-scheduled to 14 August 2018. The plaintiff attended the enquiry on this date. He had even appointed Weiss International to prepare a valuation report dated 19 June 2018 for the purpose of the enquiry.

[72] The purpose of service of Form E is to bring the enquiry to the attention of all interested persons, in order that they may be heard in the enquiry. Since the plaintiff was present on 14 August 2018, the issue of non-service of Form E does not arise.

[73] I find the plaintiff's allegation that he was not allowed to participate in the enquiry on 14 August 2018 to be unsubstantiated. In cross-examination, he admitted that he was in fact asked by the officer to furnish proof that he was the administrator of the estate of Nordin. The minutes of enquiry proceedings is self-explanatory. It states that the plaintiff failed to furnish documentary proof that he was the administrator of the registered proprietor of the land and was asked to do so on the next enquiry date. On the other hand, Stigma Emas, informed the enquiry that it was the successful bidder for the land at the recently concluded public auction.

[74] The enquiry was then adjourned to 27 September 2018. Stigma Emas was informed of the enquiry date, but the plaintiff alleged he was not. By this date, Stigma Emas had furnished Form 16I and Form 16Q to prove that it had fully settled the balance purchase price on 8 August 2018. Having fully settled the purchase price of the land, I am of the view that on 27 September 2018, Stigma Emas was the beneficial owner. Nordin had no more rights in relation to the property. In view of this, the fact that the plaintiff was not notified to attend, even if it was true, is irrelevant.

[75] JKTPG then proceeded to award compensation to Stigma Emas. The plaintiff contends that an award to Stigma Emas when it was not the registered proprietor, is null and void. I do not find merit in this contention. I find support in the following cases.

[76] In *Bank Kerjasama Rakyat Malaysia Bhd v. Pentadbir Tanah Daerah Sepang & Ors* [1998] CLJU 247; [1998] 1 LNS 247; [1998] MLJU 352, the chargee bank (the plaintiff) applied for an order against, *inter alia*, the registered proprietor (third defendant) that it was entitled to the compensation monies awarded by the Land Administrator. Prior to the acquisition, the land had in fact been sold at a public auction to the intervener. The High Court held:

> Upon the successful bid by the Intervener and payment of the deposit, the Third defendant became nothing more than a bare trustee. The plaintiff cannot be unaware of the fact that the Third defendant was no longer the beneficial owner of the lands. It is trite law that the Third defendant no longer has any beneficial interest.
>
> ...
>
> If the said land had been sold pursuant to foreclosure by the plaintiff and payment therefore had been made, the plaintiff had absolutely no claim whatever to any compensation sum paid for the acquisition, since that sum rightfully belongs to the intervener who had successfully purchased at the public auction.

[77] The rights of a successful bidder at a public auction was re-affirmed by the Court of Appeal in *QM Resources Sdn Bhd v. Parade Hotel Sdn Bhd & Ors* [2020] 5 CLJ 182. Whilst the facts differ from the instant case, the principle that a successful bidder obtains a good title through the chargee bank is of general application. Stigma Emas having fully paid the purchase price on the date of the enquiry was rightfully heard and awarded the compensation.

[78] The fact that Stigma Emas was not the registered proprietor on the date of the award presents no legal impediment to it being awarded compensation. This point was settled in *JW Properties Sdn Bhd v. Perbadanan Kemajuan Pertanian Selangor & Anor* [2016] 1 CLJ 13; [2016] 1 MLJ 341. The relevant passages of the judgment of Abdul Rahman Sebli (JCA as he then was) read as follows:

> Registration alone cannot be the basis for determining an interested person's entitlement to compensation under the Act. If it were so, there would be no necessity to conduct an enquiry under s. 12 of the Act. The person entitled would as a matter of course be the registered owner or who had a registrable interest in the land. Any other 'person interested' would stand no chance against such formidable claim of interest. The enquiry would then turn into a mere formality to confirm the registered owner's entitlement to the compensation.

Paragraph 2 of Form E, which is the Notice of Enquiry issued under s. 10 of the Act states as follows:

> 2 All persons having interests in the said land, whether as proprietor, occupier, lessee, chargee, tenant or otherwise, are hereby required to appear before the undersigned at the above time either personally or by agent and there to state:
>
> ...

The first few words of the paragraph shows that a 'person interested' is not confined to a registered owner of the land. It includes an occupier. Having regard to the spirit of the Act, what the court in a claim for compensation under the Act has to determine is whether the claimant has established his lawful interest in the land. It is not just any interest of course. It must be an interest that is recognised by law, for example if the claimant has a registrable interest, beneficial interest or equitable interest in the land.

Parliament in its wisdom has decided not to give an exhaustive list of the categories of persons entitled to be paid compensation under the Act, other than to exclude tenants at will. The categories must therefore be left open, as intended by the Legislature. In *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809, the Court of Appeal in itemising the different categories of persons interested under the Act included the following persons:

(a) a person who has entered into a contract to purchase a piece of land, *ie*, a beneficial owner;

(b) an option holder; and

(c) a person having equitable interest in the acquired property under trust.

[79] To conclude the issue, the plaintiff's contention that compensation ought not to be made to Stigma Emas as it was not the registered proprietor, is untenable.

[80] The plaintiff attempted to draw inference of impropriety and questionable motives on the part of Stigma Emas and JKPTG in the conduct of the enquiry. The representatives of Stigma Emas and the officer from JKTG who testified at the trial were cross-examined vigorously in an attempt to elicit evidence from which an inference of impropriety can be drawn. To my mind, suspicion alone is not sufficient. In the absence of cogent evidence, I would not give any credence to the allegations.

Whether A Claim In Negligence Can Be Made Against Land Serve And TKS In The Preparation Of The Valuation Report

[81] The plaintiff's claim in negligence against TKS and Land Serve stems from the valuation of the land prepared by TKS for the purpose of the foreclosure proceedings.

[82] Land Serve was appointed by CIMB to prepare a valuation report. The plaintiff disputes the valuation of the land at RM1,000,000, and its forced sale value at RM800,00. He claims that the valuation was far below that of JKPTG at RM671 per sq metre, totalling RM13,746,777. Consequently, both TKS and Land Serve had breached their duty of care based on the principle in *Caparo Industries Plc v. Dickman* [1990] 2 AC 605, and ought to be found liable in negligence.

[83] The law on the ingredients establishing negligence is trite. The elements comprising existence of duty of care, breach and damages resulting, must be proved.

[84] TKS and Land Serve refute the existence of a duty of care. They contend that in preparing the valuation report, their duty is owed only to CIMB as the latter was their client. The plaintiff is a mere third party.

[85] Whilst there are established scenarios where a duty of care is said to arise, the courts have recognised that the categories are not closed and the courts are guided by the tests as enunciated in *Lok Kok Beng & Ors v. Loh Chiak Eong & Anor* [2015] 7 CLJ 1008; [2015] 4 MLJ 734. The Federal Court held:

> To put it in a nutshell the preferred test is the three fold test, where the requirements of foreseeability, proximity and policy considerations must exist in any claim for negligence. The three fold test has been recognised by the House of Lords in *Caparo Industries Plc v. Dickman* [1990] 2 AC 605, as the elements giving rise to a duty of care. In the judgment of Lord Bridge in *Caparo* at pp. 617, His Lordship said that:
>
> > What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other.
>
> The most difficult ingredient to prove in establishing a duty of care is the requirement of sufficient proximity between the claimant and the defendant. The court would have to look at the closeness of the relationship between the parties and other factors to determine sufficient proximity based on the facts and circumstances of each case. These factors are likely to vary in different categories of cases.

(See also: *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495; [2022] MLJU 2754, Court of Appeal).

[86] The case of *Smith v. Eric S Bush (A Firm)* [1990] 1 AC 831 was cited by both counsels in their submission. In that case, Eric Bush, a surveyor was engaged to conduct a property valuation by a building society. The property

valuation said no essential repairs were needed. Mrs Smith relied on the valuation and bought the house. Bricks from the chimney collapsed through the roof, smashing the loft. She sued the defendant for breach of duty of care in statements made in the valuation.

[87] The House of Lords held that in limited circumstances a duty of care may be owed to a third party. Although Eric Bush was a third-party valuer, a duty of care was owed to Mrs Smith since he was aware that the valuation will probably be relied upon by the prospective purchaser and mortgagor of the house.

[88] The facts in *Smith v. Eric S Bush* (*supra*) are clearly easily distinguishable from that of the present case. Land Serve was appointed by CIMB to value the land. The valuation was referred to for the purpose of fixing the reserve price at the auction. A chargor is at liberty to appoint his own valuer if he disagrees with the reserve price. It would not be in the contemplation of TKS and Land Serve that the plaintiff would be relying on the valuation report. In foreclosure proceedings, a chargor is not expected to rely on the valuation of the chargee bank.

[89] In the circumstances, I do not find there to be a relationship of proximity between Land Serve and the plaintiff for a duty of care to be owed to him.

Whether The Valuation Of The Land Was Credible

[90] Notwithstanding the fact that I do not find a duty of care owed to the plaintiff by Land Serve and TKS, I shall nonetheless deal with the credibility of the report to determine if Land Serve and TKS breached their duty of care in the preparation of the valuation report.

[91] The plaintiff claims that the valuation report of both TKS and Land Serve is not credible. The valuation of the land prepared for the purpose of the foreclosure proceedings differ substantially with the compensation awarded for acquisition of the land.

[92] In defence, TKS explained that the material date of valuation was 19 July 2017. The land was a parcel of agricultural land within the Malay Reservation Area. TKS testified that the method of valuation he adopted was the comparison method. Five comparables comprising of Malay Reserve land, were used and adjustments made based on factors such as size, location, terrain, tenure, restrictions in interest to arrive at the market value. TKS also added that there was dearth of recent sales evidence of similar property within the immediate vicinity. Based on the comparables he considered. he arrived at the market value of RM1,000,000 with a forced sale value of RM800,000 at 19 July 2017.

[93] In an attempt to rebut the valuation of TKS, the plaintiff adduced a valuation report by Weiss International dated 15 June 2018. He admitted in cross-examination that the report was commissioned for the purpose of the acquisition proceedings. The land was valued at RM16,539,155.10, based on RM807.30 per square metre.

[94] TKS explained the huge disparity between his valuation and that of Weiss International. In valuing a Malay Reserve Land taken in compulsory acquisition, the status of a Malay Reserved Land will not be taken into account.

[95] I find his evidence in this regard supported by the provisions under the Land Acquisition Act 1960. The provisions relating to determination market value of land is as set out below:

FIRST SCHEDULE
[Sections 12, 35 and 47]

PRINCIPLES RELATING TO THE DETERMINATION OF COMPENSATION

Market value

1. (1) ...

(2A) In assessing the market value of any scheduled land which is Malay reservation land under any written law relating to Malay reservations, or a Malay holding under the Malay Reservations Enactment of Terengganu [Terengganu En. No. 17 of 1360 (A.H)], or customary land in the State of Negeri Sembilan or the State of Malacca, **the fact that it is such Malay reservation land, a Malay holding, or customary land shall not be taken into account** except where the scheduled land is to be devoted, after the acquisition, solely to a purpose for the benefit of persons who are eligible to hold the land under such written law.

(emphasis added)

[96] The above provision clearly precludes the fact of Malay Reserve in determining compensation for the land taken in acquisition. In the case of Malay Reserve land, the basis of valuation for foreclosure proceedings and compensation in acquisition is materially different. The plaintiff adduced no evidence to rebut TKS' valuation of the land as a Malay Reserve Land. I therefore accept TKS' valuation as it was arrived at by adopting the comparison method, which is an accepted method of valuation.

Whether The Land Administrator Was Wrong To Reject The Request To Postpone The Public Auction

[97] Although the foregoing issues alone suffice to determine the outcome of this case, I shall however, deal with one other issue which merits consideration.

[98] The plaintiff claims that the Land Administrator was wrong to reject the request to postpone the public auction, particularly when CIMB was minded to do so. The provision in relation to postponement of the auction is house in s. 264A of the NLC which provides:

> Postponement or cancellation of an order for sale by Land Administrator
>
> 264A. (1) An order for sale made under section 263 may be postponed only once for a period not exceeding three months or cancelled by the Land Administrator upon an application of the chargee with the concurrence of the chargor in Form 16O and shall be accompanied by such fee as may be prescribed:
>
> Provided that such application shall be submitted to the Land Administrator not less than seven days before the date of the sale.
>
> (2) Upon receiving an application made under subsection (1), the Land Administrator may approve or reject the application.

[99] It is not in dispute that there was an attempt by CIMB to present Form 16O to vacate the auction date. The evidence adduced was that the first attempt was made on 20 July 2018 and several attempts thereafter were also made.

[100] The Land Administrator 's reason for rejection was that Form 16O was presented less than seven days before the auction date. The last date to present Form 16O was 19 July 2018. Although Form 16O was not adduced as part of the documentary evidence at the trial, parties did not dispute its existence.

[101] I do not find any reason to fault the Land Administrator's basis for rejecting the Form 16O. The proviso to s. 264(1) allows him to reject the application to postpone the auction if the period stipulated therein is not complied with. Further s. 264(2) confers upon him a discretion whether to approve or reject the application even if it was submitted within time.

[102] In the circumstances, I do not find the Land Administrator to have been wrong in rejecting Form 16O so as to render the public auction a nullity.

Conclusion

[103] Premised on the above, I am not persuaded that the order for sale and public auction were null and void on the grounds advanced. That being the case, Stigma Emas being the successful bidder at the public auction, was correctly awarded the compensation at the land acquisition enquiry.

[104] As for Suit 429, I find the plaintiff to have failed in establishing a claim in negligence against Land Serve and TKS.

[105] The counsel for Stigma Emas then urged this court to make an order for the release of the compensation monies ordered to be paid into court on 19 December 2018. I have examined the terms of the order directing for the monies to be kept in court until the disposal of this suit. In view of the outcome, I agree with the prayer for release of the monies.

[106] In the result, I make the following orders:

(i) the plaintiff's claim in Suit 36 is dismissed against all the defendants;

(ii) the claim by fourth defendant against third party in Suit 36 is dismissed;

(iii) the plaintiff's claim in Suit 429 against both the defendants is dismissed;

(iv) that the compensation monies deposited into court pursuant to High Court order dated 19 December 2018 amounting to RM14,619,330.40 is to be paid out to Stigma Emas, the fifth defendant in Suit 36; and

(v) in respect of Suit 36, the plaintiff is to pay costs of RM10,000 to the first and second defendants, RM10,000 to the third defendants, RM20,000 to the fourth defendant and RM10,000 to the fifth defendant. No costs is to be ordered against the fourth defendant to be paid to the third party. In respect of Suit 429, the plaintiff is to pay costs of RM30,000 to the first and second defendants.